

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Cody A. Hearn and Christopher A. Hearn, )  
individually and as Personal Representative )  
of the Estate of Henry C. Hearn, ) C/A No. 9:11-1074-MBS

Plaintiff, )

vs. )

**O R D E R**

Lancaster County; Barry S. Faile, )  
individually and in his official capacity as )  
the Sheriff of Lancaster County; Debbie )  
Horne, individually and in her official )  
capacity as Jail Administrator; and Chuck )  
Kirkley, Donovan Small, Mitzi Snipes, )  
and James Whitaker, individually and in )  
their official capacities as Lancaster county )  
Deputy Sheriffs; John Does 1-6, )  
individually and in their official capacities )  
as Lancaster County Deputy Sheriffs; and )  
John Does 7-12, individually and in their )  
official capacities as Lancaster County )  
Correction Officers, )

Defendants. )

Plaintiffs Cody A. Hearn and Christoper A. Hearn filed the within wrongful death action on April 4, 2011 in the Court of Common Pleas for Lancaster County, South Carolina. On May 4, 2011, Defendants Barry S. Faile, Debbie Horne, Chuck Kirkley, Donovan Small, Mitzi Snipes, and James Whitaker, in their individual and official capacities, (hereinafter “Defendants”) removed the case to this court.

This matter is before the court on a motion to dismiss filed by Defendants on May 4, 2011. Plaintiffs filed a response in opposition to the motion to dismiss on May 4, 2001. On June 3, 2011, Defendants replied.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling. On July 7, 2011, the Magistrate Judge issued a Report and Recommendation recommending that the motion to dismiss be denied. Defendants filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly, the motion to dismiss (Entry 4) is denied.

**IT IS SO ORDERED.**

s/ Margaret B. Seymour  
United States District Judge

Columbia, South Carolina  
July 28, 2011